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The Federal Judiciary and the Issue of Trial by Jury

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. . . . in all those cases, where the general government has jurisdiction in civil questions, the proposed Constitution not only makes no provision for the trial by jury in the first instance, but, by its appellate jurisdiction, absolutely takes away that inestimable privilege, since it expressly declares the Supreme Court shall have appellate jurisdiction both as to law and fact. Should, therefore, a jury be adopted in the inferior court, it would only be a needless expense, since, on an appeal, the determination of that jury, even on questions of fact, however honest and upright, is to be of no possible effect. The Supreme Court is to take up all questions of fact; to examine the evidence relative thereto; to decide upon them, in the same manner as if they had never been tried by a jury. Nor is trial by jury secured in criminal cases. It is true that, in the first instance, in the inferior court, the trial is to be by jury. In this, and in this only, is the difference between criminal and civil cases. But, sir, the appellate jurisdiction extends, as I have observed, to cases criminal, as well as civil, and on the appeal the court is to decide not only on the law but on the fact. If, therefore, even in criminal cases, the general government is not satisfied with the verdict of the jury, its officer may remove the prosecution to the Supreme Court; and there the verdict of the jury is to be of no effect, but the judges of this court are to decide upon the fact as well as the law, the same as in civil cases.

Thus, sir, jury trials, which have ever been the boast of the English constitution -- which have been by our several state constitutions so cautiously secured to us -- jury trials, which have so long been considered the surest barrier against arbitrary power, and the palladium of liberty, with the loss of which the loss of our freedom may be dated, are taken away by the proposed form of government, not only in a great variety of questions between individual and individual, but in every case, whether civil or criminal, arising under the laws of the United States, or the execution of those laws. It is taken away in those very cases where, of all others, it is most essential for our liberty to have it sacredly guarded and preserved: in every case, whether civil or criminal, between government and its officers on the one part, and the subject or citizen on the other. Nor was this the effect of inattention, nor did it arise from any real difficulty in establishing and securing jury trials by the proposed Constitution if the Convention had wished to do so; but the same reason influenced here as in the case of the establishment of the inferior courts. As they could not trust state judges, so would they not confide in state juries. They alleged that the general government and the state governments would always be at variance -- that the citizens of the different states would enter into the views and interests of their respective states, and therefore ought not to be trusted in determining causes in which the general government was any way interested, without giving the general government an opportunity, if it disapproved the verdict of the jury, to appeal, and to have the facts examined into again, and decided upon by its own judges, on whom it was thought a reliance might be had by the general government, they being appointed under its authority. Thus, sir, in consequence of this appellate

jurisdiction, and its extension to facts as well as to law, every arbitrary act of the general government, and every oppression of all that variety of officers appointed under its authority for the collection of taxes, duties, impost, excise, and other purposes, must be submitted to by the individual, or must be opposed with little prospect of success, and almost a certain prospect of ruin, at least in those cases where the middle and common class of citizens are interested. Since, to avoid that oppression, or to obtain redress, the application must be made to one of the courts of the United States -- by good fortune, should this application be in the first instance attended with success, and should damages be recovered equivalent to the injury sustained, an appeal lies to the Supreme Court, in which case the citizen must at once give up his cause, or he must attend to it at the distance, perhaps, of more than a thousand miles from the place of his residence, and must take measures to procure before that court, on the appeal, all the evidence necessary to support his action, which, even if ultimately prosperous, must be attended with a loss of time, a neglect of business, and an expense, which will be greater than the original grievance, and to which men in moderate circumstances would be utterly unequal.